

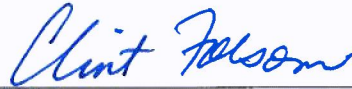
SUPERIOR METROPOLITAN DISTRICT NO. 1  
RESOLUTION NO. SMD#1 - 4  
SERIES 2018

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SUPERIOR METROPOLITAN DISTRICT NO. 1 APPROVING A CONSTRUCTION CONTRACT WITH FRONTIER ENVIRONMENTAL SERVICES, LLC, FOR CONSTRUCTION OF THE 2018 DRAINAGE PROJECT

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SUPERIOR METROPOLITAN DISTRICT NO. 1, as follows:

Section 1. The Construction Contract between the Superior Metropolitan District No. 1 and Frontier Environmental Services, LLC, for Construction of the 2018 Drainage Projects is hereby approved in substantially the same form as attached hereto, subject to final approval by the District's General Counsel.

ADOPTED this 26<sup>th</sup> day of February, 2018.



Clint Folsom, President

ATTEST



Phyllis Hardin, Secretary

## CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT (the "Contract") is made and entered into this 26<sup>th</sup> day of February, 2018 (the "Effective Date"), by and between the Superior Metropolitan District No. 1, 124 East Coal Creek Drive, Superior, Colorado 80027, a Colorado special district (the "District"), and Frontier Environmental Services, LLC, an independent contractor with a principal place of business at 5350 Vivian Street, Unit B, Arvada, Colorado 80002 ("Contractor") (each a "Party" and collectively the "Parties").

For the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Scope of Work. Contractor shall perform the following described work (the "Work"), in accordance with this Contract and the Contract Documents, attached hereto and incorporated herein by this reference: drainage improvements with construction of swales, installation of culverts, and trail improvements in the Town of Superior.
2. Bonds. Within 10 days of the date of this Contract, Contractor shall provide the payment and performance bond and certificate of insurance required by the Contract Documents.
3. Commencement and Completion of Work. Contractor shall commence the Work within 10 days of date of the Notice to Proceed. Substantial Completion of the Work shall be accomplished on or before May 15, 2018, unless the period for completion is extended otherwise in accordance with the Contract Documents. Final Completion of the Work shall be accomplished within 30 days of the date of Substantial Completion.
4. Compensation/Contract Price. The District agrees to pay Contractor, subject to all of the terms and conditions of the Contract Documents, for the Work, an amount not to exceed \$153,929. The District shall pay Contractor in the manner and at such times as set forth in the General Provisions such amounts as required by the Contract Documents.
5. Illegal Aliens.
  - A. Certification. By entering into this Contract, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.
  - B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.



C. Verification.

1. If Contractor has employees, Contractor has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify or Department Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien who is performing work under this Contract, Contractor shall: notify the subcontractor and the District within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Contract; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection a hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Contract; except that Contractor shall not terminate the contract with the subcontractor if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Contract.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Contract.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the attached "No Employee Affidavit." If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Contract via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

6. Keep Jobs In Colorado Act. Pursuant to the Keep Jobs in Colorado Act, C.R.S. § 8-17-101, *et seq.* (the "Act"), and the rules adopted by the Division of Labor of the Colorado Department of Labor and Employment implementing the Act (the "Rules"), Contractor shall employ Colorado labor to perform at least 80% of the work under this Contract and shall obtain and maintain the records required by the Act and the Rules. For purposes of this Section, "Colorado labor" means a person who is a resident of the state of Colorado at the time of this Contract, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a *bona fide* qualification. A resident of the state of Colorado is a person with a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last 30 days. Contractor represents that it is familiar with the requirements of the Act and the Rules and will fully comply with same. This Section shall not apply to any

project for which appropriation or expenditure of moneys may be reasonably expected not to exceed \$500,000 in the aggregate for any fiscal year.`

7. Governing Law and Venue. This Contract shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

8. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Contract by the District shall not constitute a waiver of any of the other terms or obligation of this Contract.

9. Integration. This Contract and any attached exhibits constitute the entire Contract between Contractor and the District, superseding all prior oral or written communications.

10. Third Parties. There are no intended third-party beneficiaries to this Contract.

11. Notice. Any notice under this Contract shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail, addressed to the Party at the address on the first page of this Contract.

12. Severability. If any provision of this Contract is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

13. Modification. This Contract may only be modified upon written agreement of the Parties.

14. Assignment. Neither this Contract nor any of the rights or obligations of the Parties shall be assigned by either party without the written consent of the other.

15. Governmental Immunity. The District and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the District and its officers, attorneys or employees.

16. Rights and Remedies. The rights and remedies of the District under this Contract are in addition to any other rights and remedies provided by law. The expiration of this Contract shall in no way limit the District's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

17. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the District not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year.

IN WITNESS WHEREOF, this Construction Contract has been executed by the Parties as of the Effective Date.



TOWN OF SUPERIOR, COLORADO

Clint Folsom

Clint Folsom, ~~Chair~~ President

ATTEST



Matt Beley, Executive Director

XXXXXX COLORADO XXXXXX Phyllis L. Hardin, Secretary

CONTRACTOR

By:

[Signature]

Frontier Environmental Services

STATE OF COLORADO )

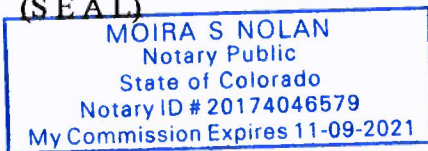
) ss.

COUNTY OF JEFFERSON )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 20th day of February, 2018, by Brent Scarbrough as Partner of Frontier Environmental Services.

My commission expires: 11-09-2021

(SEAL)



[Signature]

Notary Public



## NO EMPLOYEE AFFIDAVIT

*[To be completed only if Contractor has no employees]*

### 1. Check and complete one:

☐ I, \_\_\_\_\_, am a sole proprietor doing business as \_\_\_\_\_. I do not currently employ any individuals. Should I employ any employees during the term of my Contract with the District, I certify that I will comply with the lawful presence verification requirements outlined in that Contract.

OR

☐ I, \_\_\_\_\_, am the sole owner/member/shareholder of \_\_\_\_\_, a \_\_\_\_\_ [specify type of entity – i.e., corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Contract with the District, I certify that I will comply with the lawful presence verification requirements outlined in that Contract.

### 2. Check one.

☐ I am a United States citizen or legal permanent resident.

*The District must verify this statement by reviewing one of the following items:*

- A valid Colorado driver's license or a Colorado identification card;
- A United States military card or a military dependent's identification card;
- A United States Coast Guard Merchant Mariner card;
- A Native American tribal document;
- In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or
- Any other documents or combination of documents listed in the District's "Acceptable Documents for Lawful Presence Verification" chart that prove both Contractor's citizenship/lawful presence and identity.

OR

☐ I am otherwise lawfully present in the United States pursuant to federal law.

*Contractor must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the District.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

DEPARTMENT PROGRAM AFFIDAVIT

*[To be completed only if Contractor participates in the  
Department of Labor Lawful Presence Verification Program]*

I, Brent Scarbrough, as a public contractor under contract with the District,  
hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are  
newly hired for employment to perform work under this public contract for services (the  
"Contract") with the District within 20 days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. §  
1324a which verify the employment eligibility and identity of newly hired employees who  
perform work under the Contract; and

3. I have not and will not alter or falsify the identification documents for my newly  
hired employees who perform work under the Contract.

Brent Scarbrough  
Signature

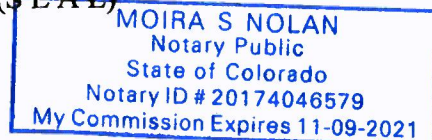
2/20/18  
Date

STATE OF COLORADO )  
 ) ss.  
COUNTY OF JEFFERSON )

The foregoing instrument was subscribed, sworn to and acknowledged before me this  
20<sup>th</sup> day of February, 2018, by Brent Scarbrough as Partner of  
Frontier Environmental Services

My commission expires: 11-09-2021

(SEAL)



Moira S. Nolan  
Notary Public

## **GENERAL PROVISIONS**

### **PART 1. DEFINITIONS**

#### **1.01 CONTRACT DOCUMENTS:**

- A. Bid Form (Including Bid Summary);
- B. Bid Schedule;
- C. Bidder's Qualification Statement;
- D. Construction Contract;
- E. General Provisions
- F. Special Provisions;
- G. Technical Specifications;
- H. Construction Drawings;
- I. Certificate of Insurance Verification;
- J. Notice of Award;
- K. Notice to Proceed;
- L. Bid Bond;
- M. Payment and Performance Bond;
- N. Certificate of Final Payment;
- O. Final Acceptance Form; and
- P. Documentation submitted by Contractor prior to Notice of Award.

#### **1.02 CHANGE ORDER:**

A written order issued by the District after execution of the Contract authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time.

#### **1.03 CONTRACT:**

The entire written agreement covering the performance of the Work described in the Contract Documents including all supplemental agreements thereto and all general and special provisions pertaining to the Work and materials therefor.

#### **1.04 CONTRACT PRICE:**

The amount set forth in Paragraph 4 of the Construction Contract.

#### **1.05 CONTRACT TIME:**

The time for completion of the Work as set forth in Paragraph 3 of the Construction Contract.

#### **1.06 DAY:**

Calendar day, unless otherwise specified. When the last day for the occurrence of an event falls on a Sunday or legal holiday as recognized by the Town, the time for performance shall be automatically extended to the next business day.

#### **1.07 FINAL COMPLETION:**

The date as certified by the Project Manager when all of the Work is completed and final payment may be made.

#### **1.08 PROJECT MANAGER:**



The Town's duly authorized representative in connection with the Work.

**1.09 SUBCONTRACTOR:**

Any person, firm or corporation with a direct contract with Contractor who acts for or in behalf of Contractor in executing any part of the Contract, excluding one who merely furnishes material.

**1.10 SUBSTANTIAL COMPLETION:**

The date as certified by the Project Manager when the Town occupies or takes possession of all or substantially all of the Work, or when the Town may occupy or take possession of all or substantially all of the Work and put it to beneficial use for its intended purposes.

**1.11 WORK:**

All the work specified, indicated, shown or contemplated in the Contract Documents, including all alterations, amendments or extensions thereto made by supplemental agreements or written orders of the Project Manager.

**PART 2. TIME**

**2.01 TIME OF THE ESSENCE:**

All times stated in the Contract Documents are of the essence.

**2.02 FINAL ACCEPTANCE:**

Upon Final Completion, the Project Manager will issue final acceptance.

**2.03 CHANGES IN THE WORK:**

The District reserves the right to order changes in the Work, in the nature of additions, deletions or modifications, without invalidating the Contract, and to make corresponding adjustments in the Contract Price and the Contract Time. All changes shall be authorized by a written Change Order signed by the Project Manager. The Change Order shall include appropriate changes in the Contract Documents and the Contract Time. The Work shall be changed and the Contract Price and Contract Time modified only as set forth in the written Change Order. Any adjustment in the Contract Price resulting in a credit or a charge to the District shall be determined by mutual agreement of the parties before the work set forth in the Change Order is commenced. If a Change Order results in an increase in the Contract Price, approval of the Superior Board of Trustees shall be required, and if such approval is not obtained, the District shall have no payment obligation regardless of whether the Work pursuant to the Change Order has been performed.

**2.04 DELAYS:**

A. If Contractor is delayed in the progress of the Work by fire, unusual delay in transportation, unanticipated adverse weather conditions, or other unavoidable casualties beyond Contractor's control other than unanticipated adverse weather conditions, the Contract Time shall be extended for a reasonable period of time. "Weather" means precipitation, temperature, or wind, and an "adverse weather condition" means weather that on any calendar day varies from the average weather conditions for that day by more than 100% as measured by the National Oceanic and Atmospheric Administration. The

term "unanticipated adverse weather conditions" means the number of days in excess of the anticipated adverse weather days per month as set forth below:

**MONTHLY ANTICIPATED ADVERSE WEATHER DAYS**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
7	4	4	4	6	3	4	2	3	3	2	5

*By reason of example only*, if in March there are two days when the snowfall exceeds the average snowfall for that day by 100%, those two days will have experienced an adverse weather condition. However, there will have been no unanticipated adverse weather condition in March, because there are four anticipated adverse weather days in March, which should be accounted for in the schedule. If, however, there are five days in which the snowfall exceeds the average snowfall by 100%, an unanticipated adverse weather condition will have occurred, and Contractor shall be entitled to request an extension of time.

B. Any request for extension of the Contract Time shall be made in writing to the Project Manager not more than 7 days after commencement of the delay; otherwise it shall be waived. Any such request shall contain an estimate of the probable effect of such delay on the progress of the Work.

C. Contractor shall not be entitled to any increase in the Contract Price, or to damages, or to additional compensation as a consequence of any such delays.

**2.05 NO DAMAGES FOR DELAY:**

In strict accordance with C.R.S. § 24-91-103.5, the District shall not amend the Contract Price to provide for additional compensation for any delays in performance which are not the result of acts or omissions of the District or persons acting on behalf of the District.

**PART 3. CONTRACTOR'S RESPONSIBILITIES**

**3.01 COMPLETION/SUPERVISION OF WORK:**

Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and licenses in good standing. The services performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by others in the same or similar type of work, and in compliance with applicable laws, ordinances, rules and regulations. Contractor shall be responsible for completion of all Work in a timely and workmanlike manner in accordance with the terms and specifications of the Contract Documents, including the techniques, sequences, procedures and means. Contractor shall be responsible for the coordination of all Work. Contractor shall supervise and direct the Work and give it all attention necessary for proper supervision and direction. Contractor shall maintain a supervisor on site at all times when Contractor or any subcontractor is performing Work.

**3.02 DUTY TO INSPECT:**

Contractor shall inspect all Contract Documents, tests and reports, including soil tests and engineering tests, if applicable, and shall conduct a site or field review prior to executing the Contract. Contractor assumes the risk of all conditions which are disclosed, or which are



reasonably suggested by any such tests or reports, or which would be disclosed by a field or site review. Contractor shall have the affirmative duty to advise the District of any concerns which Contractor may have regarding construction conditions prior to executing the Contract.

### **3.03 FURNISHING OF LABOR AND MATERIALS:**

A. Contractor shall provide and pay for all labor, materials and equipment, including: tools; construction equipment and machinery; utilities, including water; transportation; and all other facilities and services necessary for the proper completion of the Work.

B. In all purchases of supplies, materials and provisions to be incorporated or otherwise used by Contractor in the Work, Contractor shall use supplies, materials and provisions produced, manufactured or grown in Colorado if such supplies, materials and provisions are not of inferior quality to those offered by competitors outside of Colorado.

C. While engaged in the performance of the Work, Contractor shall maintain employment practices that do not violate the provisions of the Colorado Antidiscrimination Act of 1957, C.R.S. § 24-34-301, *et seq.*

### **3.04 EMPLOYEES AND SAFETY:**

A. Contractor shall maintain at all times strict discipline of its employees, and Contractor shall not employ on the Work any person unfit or without sufficient knowledge, skill, and experience to perform properly the job for which the employee was hired.

B. Contractor shall be responsible to the District for the acts, negligence and omissions of all direct and indirect employees and subcontractors. The Contract Documents shall not be construed as creating any contractual relation between any subcontractor and the District.

C. Contractor shall provide for and oversee all safety orders and precautions necessary for the safe performance of the Work. Contractor shall take reasonable precautions for the safety of all employees and others whom the Work might affect, all work and materials incorporated into the Work, and all property and improvements on the work site and adjacent property.

### **3.05 CLEANUP:**

A. Contractor shall keep the Work site and adjoining ways free of waste material and rubbish caused by its employees or subcontractors. Contractor shall remove all waste material and rubbish daily during construction, together with all tools, equipment, machinery and surplus materials. Contractor shall, upon termination of its Work, conduct general cleanup operations on the work site, including the cleaning of all surfaces, paved streets and walks, and steps. Contractor shall also conduct such general cleanup operations on adjacent properties which were disturbed by the Work.

B. If Contractor fails to perform the cleanup required by this Section, after written notice, the District may cause the cleanup to be performed at Contractor's expense. Upon receipt of a statement for such cleanup, Contractor shall pay to the District the costs incurred by the District for such cleanup, or the District shall have the right to withhold said amount from any final payment due to Contractor.



### **3.06 PAYMENT OF ROYALTIES AND LICENSE FEES:**

Contractor agrees to pay all royalties and license fees necessary for the Work, and to defend against all actions for infringement of copyright or patent rights, and to save and hold the District harmless from such actions.

### **3.07 TAXES, LICENSES AND PERMITS:**

Contractor shall pay all taxes imposed by law in connection with the Work, except the District of Superior Sales Tax, for purchases within the District, and shall procure all permits and licenses necessary for the prosecution of the Work. Contractor shall obtain a District tax-exempt number for the sales tax exemption.

### **3.08 SAMPLES AND SHOP DRAWINGS:**

Contractor shall furnish, upon the request of the Project Manager, samples and shop drawings to the Project Manager, who shall review them for conformance with the Contract Documents. All Work shall comply with approved samples and drawings.

### **3.09 COMPLIANCE WITH LAWS AND REGULATIONS:**

Contractor shall comply with all federal, state and local laws, ordinances, rules, regulations and orders in any manner relating to the Work. If any provision of the Contract Documents is at variance therewith, Contractor shall notify the Project Manager promptly.

### **3.10 SUBCONTRACTORS:**

A. Contractor shall furnish to the Project Manager at the time the Construction Contract is executed, a list of names of subcontractors to whom Contractor proposes to award the portions of the Work to be subcontracted by Contractor.

B. Contractor shall not employ a subcontractor to whose employment the District reasonably objects, nor shall Contractor be required to hire a subcontractor to whose employment Contractor reasonably objects.

C. All contracts between Contractor and subcontractor shall conform to the provisions of the Contract Documents, and shall incorporate the relevant provisions of the Contract Documents.

### **3.11 CORRECTIVE WORK:**

When any Work does not conform to the Contract Documents, Contractor shall make the necessary corrections so that the Work will so conform. Such corrections shall be accomplished within the time period approved by the Project Manager. Failure to complete such required corrections within the time period required shall constitute a breach of the Contract. The District's review, approval or acceptance of, or payment for any work shall not be construed as a waiver of any rights under this Contract or any cause of action arising out of the performance of this Contract.

### **3.12 OTHER CONTRACTS:**

The District reserves the right to let other contracts in connection with the Work. Contractor shall cooperate with all other contractors so that their work is not impeded by the Work, and Contractor shall give other contractors access to the work site necessary to perform their contracts.

### **3.13 COMMUNICATION:**

Contractor shall direct all communications to the District regarding the Work to the attention of the Project Manager.

## **PART 4. TERMINATION**

### **4.01 LABOR DISPUTES:**

Notwithstanding any other provision contained in this Contract, in the event of any picket or other form of labor dispute at the construction site, Contractor shall continue to perform the Work without interruption or delay. If Contractor ceases performance of the Work because of such picket or other form of labor dispute, the District may terminate the services of Contractor after giving 48 hours' written notice of its intent to do so.

### **4.02 DEFAULT:**

The District may terminate this Contract upon thirty days' written notice to Contractor if Contractor defaults in the timely performance of any provision of the Contract Documents, or otherwise fails to perform the Work, or any part thereof, in accordance with the Contract Documents. Termination of the Contract by the District shall not be the District's exclusive remedy, and the District may pursue such other remedies and actions lawfully available to the District including, but not limited to, an action at law for damages against Contractor or any bonding agency issuing a bond hereunder, or an action in equity for injunctive relief.

## **PART 5. WARRANTIES:**

### **5.01 WARRANTY OF FITNESS OF EQUIPMENT AND MATERIALS:**

Contractor represents and warrants to the District that all equipment and materials used in the Work, and made a part of the Work, or placed permanently in the Work, shall be new unless otherwise specified in the Contract Documents. All equipment and materials used shall be of good quality, free of defects and in conformity with the Contract Documents. All equipment and materials not in conformity with the Contract Documents shall be considered defective.

### **5.02 GENERAL WARRANTY:**

Contractor shall warrant and guarantee all material furnished and work performed by Contractor for a period of two years from the date of final acceptance of the Work by the Project Manager. Under this warranty, Contractor agrees to repair or replace, at its own expense and under the direction of the Project Manager, any portion of the Work which fails or is defective, unsound, unsatisfactory because of materials or workmanship, or which is not in conformity with the provisions of the Contract. Should Contractor fail to perform any such work within the warranty period after a request by the District, the District may withdraw from the Payment and Performance Bond any and all amounts necessary to complete the required work. The expiration of the warranty period shall in no way limit the District's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

## **PART 6. BONDS, INSURANCE AND INDEMNIFICATION**

### **6.01 INDEMNIFICATION:**

A. Contractor agrees to indemnify and hold harmless the District and its officers, insurers, volunteers, representatives, agents, employees, heirs and assigns from and



against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Contract or the Contract Documents, to the extent that such injury, loss or damage is attributable to the act, omission, error, professional error, mistake, negligence or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor, or which arise out of any worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

B. Contractor, to the fullest extent permitted by law, shall defend, investigate, handle, respond and provide defense for and defend against any such liability, claims, damages, losses, expenses or demands at the sole expense of Contractor, or at the option of the District, Contractor agrees to pay the District or reimburse the District for defense costs incurred by the District in connection with any such liability, claims, damages, losses, expenses or demands. Contractor, to the fullest extent permitted by law, shall defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not such liability, claims or demands alleged are groundless, false or fraudulent.

C. This indemnification provision is intended to comply with C.R.S. § 13-21-111.5(6) and shall be read as broadly as permitted to satisfy that intent. Contractor's liability under this provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to defend, indemnify and hold harmless the District may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement of the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

## **6.02 NOTICE OF CLAIM:**

If Contractor receives any claim arising from the performance of the Work, Contractor shall notify the District in writing of the nature of the claim within 24 hours of receipt of the claim by Contractor. In this notice, Contractor shall provide evidence that Contractor has notified Contractor's insurer of the claim. Contractor shall keep the District apprised of the disposition of the claim, and Contractor shall take all necessary action to resolve the claim and make restitution, if required, as quickly as possible.

## **6.03 INSURANCE:**

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Contract. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the District.



1. Worker's Compensation insurance as required by law.
  2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$1,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the District and the District's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.
- B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the District. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the District, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.
- C. Contractor shall provide to the District a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Contract.

#### **6.04 PERFORMANCE AND PAYMENT BOND:**

Contractor shall furnish a Payment and Performance Bond in the full amount of the Contract Price, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents, including the warranty. This bond shall remain in effect at least until two years after the date of Final Completion.

### **PART 7. PAYMENT**

#### **7.01 PROGRESS PAYMENTS:**

- A. The District shall make periodic progress payments to Contractor within 30 days following the Project Manager's approval of the Work completed. A progress payment shall be made only after Contractor has submitted an application for a progress payment on a form approved by the Project Manager, and if requested by the Project Manager, Contractor shall submit copies of invoices from subcontractors or supplies and partial waivers executed by each.
- B. Progress payments shall be in an amount equal to 95% of the Work actually completed. Completed Work shall include materials and equipment not incorporated in the Work but delivered to the work site and suitably stored.
- C. If Contractor fails to complete any required Work within the time period agreed between Contractor and the Project Manager, or within any time period set forth in the Contract Documents, as modified or extended, the District is expressly authorized to withhold any progress payment for such Work until such Work is completed.

## **7.02 FINAL PAYMENT:**

Upon final acceptance of the Work, the District shall make final payment to Contractor pursuant to C.R.S. § 38-26-107.

## **7.03 LIQUIDATED DAMAGES:**

A. Because time is of the essence and delayed performance constitutes a compensable inconvenience to the District and its residents, the liquidated damages established in this Section shall be enforced. Such damages are not a penalty. For each day Final Completion is delayed after the Final Completion date stated in the Construction Contract, as modified through approved change orders, Contractor shall be assessed the following amounts:

<b>Contract Price</b>	<b>Amount per day</b>
\$0-\$50,000	\$350
\$50,000-\$100,000	\$380
\$100,000-\$250,000	\$440
\$250,000-\$500,000	\$520
\$500,000-\$1,000,000	\$640
\$1,000,000-\$2,000,000	\$820
\$2,000,000-\$4,000,000	\$1,080
\$4,000,000-\$8,000,000	\$1,450
\$8,000,000-\$12,000,000	\$1,820
\$12,000,000 or greater	\$2,250

B. Allowing Contractor to continue and finish the Work or any part thereof after the Final Completion date shall not operate as a waiver on the part of the District of any of its rights under the Contract Documents. Any liquidated damages assessed shall not relieve Contractor from liability for any damages or costs of other contractors caused by a failure of Contractor to complete the Work in the Contract Time. Liquidated damages may be deducted from any payment due Contractor or the retainage. If the liquidated damages exceed the amount owed to Contractor, Contractor shall reimburse the District.

## **7.04 ORAL AGREEMENTS PROHIBITED:**

This Contract is expressly subject to the provisions of C.R.S. § 29-1-110(1), and Contractor acknowledges that neither the District nor any employee or agent thereof is authorized to expend or contract for the expenditure of any monies in excess of those appropriated by the District Board of Directors. The District acknowledges that sufficient funds have been appropriated to pay the Contract Price, but Contractor shall not rely upon the appropriation of any funds in addition to those already appropriated unless and until the same are lawfully appropriated by the District Board of Directors.

## **7.05 ITEMS NOT INCLUDED IN BID:**

No additional compensation shall be paid for any costs or services listed in the Contract Documents but not specifically listed in the Bid as a Bid item.



#### **7.06 CHANGES IN QUANTITY:**

- A. Except as provided in Section 7.07, the unit Bid price shown in the Bid Schedule shall be used to determine the payment owed Contractor for any changes in quantity.
- B. The actual quantity placed, as determined by the Project Manager, shall be used to calculate the payment due to Contractor.
- C. Prior to any Work being performed in excess of any of the Bid Schedule quantities, Contractor shall notify the District, in writing, of every quantity that will exceed 105% of the quantity listed on the Bid Schedule.
- D. Except as provided in Section 7.08, Contractor shall not be entitled to compensation for any increased expense, loss of expected reimbursement or loss of anticipated profits, directly or indirectly caused by any changes in quantity.

#### **7.07 BID PRICE ADJUSTMENTS:**

- A. When a major item is increased to more than 125% or decreased below 75% of the original quantity stated on the Bid Schedule, the unit Bid price shall be modified by written change order. Payment for major items shall be calculated by multiplying the actual quantity placed by the modified Bid price.
- B. For purposes of this Section, a major item is any item having a Bid value, determined by multiplying the Bid quantity by the unit Bid price, that exceeds 10% of the original Contract Price.

#### **7.08 ELIMINATED ITEMS:**

Should any items contained in the Bid Schedule be found unnecessary for completion of the Work, the items shall be eliminated. The Contract Price shall be modified through written change order, and the amount of the change order shall be the eliminated quantity multiplied by the unit Bid price stated in the Bid Schedule, minus any reasonable costs incurred by Contractor for the eliminated items. Reasonable costs shall be determined by the Project Manager based on information provided by Contractor, and may include mobilization of eliminated materials and equipment mobilization costs, if the sole purpose of the equipment was to place the eliminated material. In no case shall the costs exceed the amount of the eliminated items.

#### **7.09 MATERIALS STORED BUT NOT INCORPORATED:**

Payments may be made to Contractor for materials stored on the work site but not incorporated into the Work as evidenced by invoices or cost analyses of material produced, if the material has been fabricated or processed and is ready for installation into the Work and conforms with the Contract Documents. Payments shall not exceed 85% of the price shown in the Bid Schedule or 100% of the certified invoice cost of the stockpiled material, whichever is less. Payment for stockpiled materials shall not relieve Contractor of responsibility for loss or damage to the material. Payment for living plant materials or perishable materials shall not be made until the living or perishable material is made an integral part of the finished Work.

#### **7.10 COST RECORDS:**

Contractor shall make cost records available to the District if the District deems it necessary to determine the validity and amount of any item claimed.



## **PART 8. MISCELLANEOUS**

### **8.01 PUBLICATIONS:**

Any and all publications relating to the Work and authored by Contractor or any of its subcontractors shall be submitted to the District for its prior written approval of the content of the publication. If the District disapproves of the content of the publication, the author shall withdraw it from publication. The term "publication" as used herein shall include articles or letters to be published in any newspaper, magazine, trade journal or other periodical.

### **8.02 CONFIDENTIALITY:**

Any and all reports, information, data, statistics, forms, designs, plans, procedures, systems, studies and any other communication form of knowledge given to or prepared or assembled by Contractor under this Contract shall, to the extent authorized and permitted by law, be kept as confidential and not be made available by Contractor to any individual, company or organization without the prior written consent of the District. Notwithstanding the foregoing, Contractor shall not be restricted from releasing information in response to a subpoena, court order, or legal process, but Contractor shall notify the District in writing before responding.

### **8.03 INDEPENDENT CONTRACTOR:**

Contractor, for all purposes arising out of this Contract, is an independent contractor and not an employee of the District. It is expressly understood and agreed that Contractor shall not be entitled to any benefits to which the District's employees are entitled, such as overtime, retirement benefits, worker's compensation, injury leave or other leave benefits.

### **8.04 CONFLICTS:**

Should any conflict arise in the Contract Documents, the order of precedence is as follows:

1. Construction Contract.
2. General Provisions.
3. Special Provisions.
4. Technical Specifications.

## SPECIAL PROVISIONS

1. General. All labor, services, material, and other work necessary for the construction shall be provided by Contractor, including without limitation: managing the budget; scheduling and coordinating work meetings; conducting field tests and geotechnical studies; preparing exhibits and participating in formal and informal public meetings at locations provided by the District; and timely processing field orders, change orders and notices of substantial completion.
2. Other Regulations.
  - A. In addition to other applicable regulations, Contractor shall ensure that the Work is in compliance with the Urban Drainage and Flood Control District Urban Storm Drainage Criteria Manual, CDOT Specifications, and AASHTO Specifications.
  - B. In case of any discrepancy between any of the requirements set forth in the Urban Drainage and Flood Control District Urban Storm Drainage Criteria Manual, CDOT Specifications, AASHTO Specifications and these Contract Documents, the more stringent requirement shall apply. If any questions arise as to which requirement is more stringent than another, the Project Manager shall be authorized to determine which is more stringent, and the Project Manager's decision shall be final.
3. Representatives. Contractor shall have at the work site at all times as its agent, a competent superintendent capable of reading and thoroughly understanding the Contract Documents and being thoroughly experienced in the type of work being performed. The District may shall have a representative on the job site to observe work for conformance with the Contract Documents.
4. Work Administration.
  - A. The District shall administer the Work, including the finalization of any change orders, pay estimates and payments of such, acceptance of work, and other matters as stipulated in the Contract Documents.
  - B. The District will send out letters to the impacted residences, businesses regarding the construction. The District will also provide door hangers for Contractor to use to notify residents immediately impacted by the work. Contractor should plan on continuous communication with District staff, residents, U.S. Postal Service, Rocky Mountain Fire, and the Boulder County Sheriff's office regarding the Work schedule. The Engineer will help facilitate the efforts, but this is are not a substitute for an adequate communication plan and implementation of that plan by Contractor.
5. Engineer. The Engineer for the Project is Merrick & Company.
6. Inspections and Testing.
  - A. The District will perform materials testing through an independent materials testing firm. In addition, Contractor may conduct Quality Assurance testing at its own discretion.
  - B. Contractor shall coordinate its construction schedule with the testing agency and the District so that key inspection points may be observed. If Contractor fails to provide reasonably adequate notice or proceeds without the required inspection, the subject work shall be re-exposed or redone in its entirety, while the inspector is present. No extra



compensation shall be awarded to Contractor for extra work due to Contractor's failure to coordinate inspections.

C. Contractor shall perform construction inspections. Contractor shall attend any pre-construction meeting(s) and be available to provide technical assistance during the course of construction as necessary. Contractor shall provide site visits and reviews upon request from the District during the construction phase to ensure compliance with the intent of the plans and to resolve any potential conflicts. Contractor shall provide a written summary after each site visit.

D. Contractor shall be responsible for scheduling the final inspection with the District.

7. Construction Schedule.

A. At the time of the Pre-construction Conference, Contractor shall prepare and submit to the District for review a construction schedule including: proposed daily construction hours consisting of up to 10 working hours; details of all construction items; start and finish dates; confirmation and dates for coordinating all utility relocation and/or interruptions; and the same information for all subcontractor(s). The schedule shall not be changed without prior approval of the District. The schedule shall be in the form of a chart of suitable scale to indicate approximately the percentage of Work scheduled for completion at any time. Contractor shall enter on the chart the actual progress at the end of each 2-week interval and shall deliver to the District 3 copies thereof on a biweekly basis.

B. Contractor shall prepare and submit a schedule of the anticipated manpower by title and duty. The manpower proposed shall be adequate for orderly flow of work and completion within the time specified in the Contract Documents.

C. All construction activities shall be coordinated with the Project Manager.

8. Saturday, Sunday, Holiday and Night Work.

A. Work shall normally not be performed on Saturdays, Sundays, observed holidays, or outside of the daytime working hours of 7:00 a.m. to 5:00 p.m., or as indicated on the construction schedule. Lane closures are restricted to 8:30 a.m. to 3:30 p.m. on arterial and collector streets, except for such work as may be necessary for proper care, maintenance, and protection of Work already completed, or in cases where the Work would be endangered or if hazards to life or property would result. Full road closures are not subject to the 8:30 a.m. to 3:30 p.m. limitations.

B. If Contractor believes it necessary to work on Saturdays, Sundays, holidays, or at night, Contractor shall make prior arrangements with the District and receive written approval at least 48 hours before such time so that inspection and engineering services can be provided. Such approval may be revoked by the District if Contractor fails to maintain adequate equipment and lighting at night for the proper prosecution, control, and inspection of the work. If Work is performed without the District's prior approval, and as a result the District had not assigned inspectors, the District may declare Work performed during this period of time defective, solely on the grounds that it was not properly inspected.

C. Any Work performed on a Saturday, Sunday, holiday, or night shall be at Contractor's risk in terms of extra costs, extra work, or unforeseen conditions.

9. Progress Reports.

A. Progress reports and progress/manpower schedules shall be updated and submitted to the Project Manager at each weekly progress meeting, or at such other times as the Project Manager may request. Contractor shall also forward to the Project Manager, at the end of each month, an itemized report of the delivery status of major and critical items of purchased equipment and material, including shop drawings and the status of shop and field fabricated work.

B. If the completion of any part of the Work or the delivery of materials is behind the approved schedule, Contractor shall submit a plan acceptable to the Project Manager for bringing the Work up to schedule. The District shall have the right to withhold progress payments for the work if Contractor fails to update and submit the progress/manpower schedule and reports as specified.

10. Pre-construction Conference.

A. Contractor shall coordinate a Pre-construction Conference prior to mobilizing construction equipment. Contractor's designated supervisor(s) shall attend this meeting.

B. Contractor shall, at a minimum, provide the following to the District at the Pre-construction Conference:

- (1) The construction schedules;
- (2) A detailed estimate of partial payments for the Work;
- (3) The traffic control plan;
- (4) A detailed plan showing site access and staging areas; and
- (5) A subcontractor submittal, including names and contact phone numbers.

11. Fees and Permits. Prior to commencing any Work, Contractor shall secure, at its own expense, all necessary fees and permits required for the performance of the Work, including an Army Corps of Engineers 404 permit, if necessary. The cost of compliance with this Section (including fees) is included in the Contract Price; no additional compensation shall be provided.

12. Existing Utilities.

A. The Work shall be coordinated with all impacted utility companies, districts, associations, agencies, and residents located in the area of the Work. Contractor shall conduct the meeting and provide summary minutes.

B. Contractor shall determine the actual location of all existing utilities prior to starting any Work. Contractor shall contact utility companies for field locations prior to the start of Work, and shall contact all utilities at least 48 hours prior to beginning excavation or grading. If the exact location and depth of existing underground utilities are unknown, Contractor shall perform all necessary exploratory excavation to locate these facilities which may affect the Work prior to beginning construction. Contractor shall obtain required locates and Contractor shall include the information on the plans. Contractor shall resolve any utility discrepancies. Contractor shall be liable for all



damage done to existing utilities in the performance of the Work, and the Contract Time shall not be extended to account for repair of utilities damaged by Contractor.

C. Existing utility information shown on the Drawings has been confirmed by only limited locate and potholing data, may not reflect the exact position of existing utilities, and may not show all the utility lines present.

D. The District will mark District-owned utilities, but other utilities will need to be located. Coordinate utility locates through the Utility Notification Center of Colorado, 811. Contractor shall request the locates of District-owned utilities periodically as the Work progresses rather than as a single event. Requests for locates shall not precede the Work in any given area by more than 2 weeks.

E. If Contractor requests that utility companies relocate utilities for Contractor's convenience, such relocation shall be at Contractor's expense.

F. The District will personally contact each impacted household and business 48 hours in advance of temporary utility service or access disruption, informing residents and businesses of the estimated times and durations. Contractor shall provide at least 72 hours' advance notice. The District shall also notify residents and businesses when utility service and access have been restored. The maximum amount of time that any resident or business may be out of utility service is 4 hours. The maximum amount of time that fire protection lines may be out of utility service is 4 hours.

G. Existing utilities that are not scheduled for replacement, removal or relocation shall be protected to avoid disruption of service. To avoid damage or shifting of the utility lines and trench materials, adequate shoring, bracing and blocking shall be used.

H. Existing valves and hydrants shall be operated by District personnel only. Contractor may operate new valves prior to acceptance, in coordination with the Engineer if operating any new valve adjacent to an existing water line. To use a fire hydrant to supply construction water, Contractor shall pay a deposit to rent a meter and backflow preventer from the District. Construction water may not be obtained from an unmetered source.

I. Contractor shall provide and maintain, at its own expense, an adequate supply of water and electricity required for the Work. Contractor shall install and maintain supply connections and lines satisfactory to the Project Manager, and prior to Final Completion, Contractor shall remove the supply lines at its expense.

14. Dust Control. Contractor shall use measures to prevent and control dust within the area affected by the Work. No additional compensation shall be paid to Contractor for dust control. Contractor shall clean any soil, dirt, or debris tracked onto any adjacent streets. Within 24 hours of notification by the District that any adjacent streets require cleaning, Contractor shall clean such streets or the District may have the streets cleaned and deduct the cost of such cleaning from the Contract Price.

15. Construction Staging Areas.

A. All construction staging areas shall be located within the Work site. The boundaries of construction staging areas shall be approved by the District. Construction staging areas shall be used for material storage, parking for equipment, and employees'

vehicles. A construction trailer shall not be required, but may be used if the location of the trailer is approved by the District. Upon Final Completion, all staging areas shall be clean and restored to their original condition. No additional compensation shall be provided to Contractor for cleaning of construction staging areas.

B. Limited stockpiling in street areas is permitted, but only in small quantities, limited to two days worth of work on any street. Contractor shall coordinate and review stockpiling with the District prior to the work. Excavated material and imported backfill material that is not scheduled to be placed as backfill within two days shall be removed from the street stockpile. Stockpiles shall not block the gutter flow line, storm inlet, or obstruct any sidewalk/trail. Measures to control migration of sediment from stockpiles shall be put in place in accordance with Best Management Practices (BMP), especially if left overnight or over a weekend or other break in the work.

C. Manhole risers and cone sections, manhole frames and covers, pipe fittings and valves shall not be stored in the street.

D. Removed manhole covers/lids/frames shall be kept together, and Contractor will not be allowed to install mismatched covers/lids/frames. Contractor shall identify each set of covers/lids/frames with a unique set of identification numbers that will be inspected when reinstalling covers/lids/frames on manholes. Contractor shall be responsible for all costs associated with mismatched covers/lids/frames that require replacement.

16. Sanitary Facilities.

A. Sanitary convenience for the use of all persons employed on the Project, properly screened from public observation, shall be provided in sufficient numbers and in such a manner and at such points as approved by the District. The contents shall be removed and disposed of in a satisfactory manner.

B. Contractor shall supply sufficient drinking water from approved sources to all of its employees.

17. Soils Investigations and Foundation Engineering. Contractor shall be responsible for all geotechnical investigations necessary to construct and perform the Work. Contractor shall utilize the District's selected material testing laboratory. Contractor shall be responsible for coordinating soils testing for backfill compaction and concrete and asphalt testing. Contractor shall give the testing service 24-hours' advance notice. Contractor shall pay for all retesting due to failed tests at no cost to the District.

18. Lines and Grades. Contractor shall lay out the Work and shall be responsible for all measurements in connection therewith. Contractor shall, at its own expense, furnish all stakes, templates, platforms, equipment, and labor, including surveyors, that may be required in setting and cutting or laying out any part of the Work. Contractor shall be responsible for the proper execution of the Work to such lines and grades. The surveyor shall be a Colorado Registered Licensed Surveyor.

19. Traffic Control.

A. Contractor shall furnish all necessary flagpersons; erect and maintain warning lights, advance warning signs, detour signs, barricades, temporary fence, and sufficient safeguards around all excavations, embankments, obstructions; and perform any other



work necessary for the protection of all work being performed, and for the safety of the public and pedestrian traffic, as well as motor vehicles. All signs and barricades shall conform to the current Manual on Uniform Traffic Control Devices.

B. At the Pre-construction Conference, Contractor shall submit 5 copies of a traffic control plan for review by the District. The plan shall discuss the traffic control measures proposed for the safety of vehicular and pedestrian traffic through the work site.

C. Contractor shall at all times take proper precautions for the protection of and replacement or restoration of landscaping, driveway culverts, street intersection culverts or aprons, irrigation crossings and systems, mailboxes, driveway approaches, signs, existing utilities, and all other public and private installations that may be encountered during the Work.

D. No driveway or private alley shall be blocked without prior written permission from the resident who would be affected by such blocking, with a copy to the District.

E. No road shall be closed at any time.

F. Contractor shall advise the Boulder County Sheriff's office, school districts, trash services and residents of any lane closures, including dates and times.

G. It is anticipated that a large number of employees will use automobiles for transportation to and from the work site. It is Contractor's responsibility to: maintain, protect, and control traffic in the vicinity of and in the work site; restrict parking on streets near the work site; and provide necessary parking areas for all employees in suitable locations as approved by the District.

H. Street access to residences and businesses in the vicinity of the Work shall be maintained by Contractor during the work. At least one 12' wide lane in each direction shall be maintained at all times for U.S. Postal Service, trash service, and emergency vehicle access in and around the Work area.

20. Archaeological and Historical Discoveries.

A. Contractor shall inform the District of any evidence which might suggest to a layperson that archaeological or historical materials may be present in the work site. Upon making such a discovery, Contractor shall do whatever is necessary to avoid disturbing the work site. This may require that Contractor's activities be redirected or stopped until the District determines how to proceed.

B. As a result of Contractor's efforts to preserve the potential discovery at the work site, if Contractor's activities are delayed for longer than 8 normal work hours, Contractor shall prepare accounting information to support an adjustment to the Contract Price.

21. Water Control.

A. Contractor shall take such precautions as necessary to construct the Work in a dry condition, and Contractor shall provide for drainage, dewatering, and control of all surface and subsurface water and shall erect any necessary temporary structures or other facilities at its own expense.

- B. Contractor, at its own expense, shall furnish all necessary equipment and materials required to control the surface and subsurface water in all the areas from the commencement of Work through Final Completion.
- C. Contractor shall be responsible for furnishing, transporting, and installing all materials and equipment, well points, pumping, channelization, diversion, damming, or other means of controlling surface water and ground waters.
22. Disposal Site. Contractor shall be responsible for the removal of all excess excavation, debris, deleterious material, muck, asphalt, concrete, trees, stumps, remains from clearing and grubbing, and all other materials not used for the construction of the improvements. Costs of disposal are included in the Contract Price and shall not entitle Contractor to additional compensation. Contractor shall designate in writing a disposal site located outside the District limits and acceptable to the District.
23. Video Prior to Construction. Contractor shall provide the District with a video of the entire work site prior to beginning construction, including all adjacent areas, at Contractor's own expense. One copy of the video shall be provided to the District and become the property of the District prior to the commencement of any Work.
24. Existing Improvements and Restoration.
- A. Contractor has field inspected the work site and fully understands that existing landscaping and improvements are present within the work site. Such existing improvements shall be protected. Any damage or disruption in the public right-of-way, drainage easements, District property, or private property related to the Work shall be restored to pre-existing or better condition.
- B. Existing landscaping in the vicinity of the work areas shall be protected from damage, including lawns, shrubs, trees and irrigation lines. Workers may not place tools, equipment, rubbish or debris on lawns, landscape, driveways, or private sidewalks adjacent to the work site. Workers are prohibited from accessing water from a residents home. Landscaping that interferes with the work may be removed after discussions with the property owner and approval from the District.
- C. Contractor shall be responsible for landscape restoration associated with curb, gutter, sidewalk, and driveway replacement. Minor landscape restoration shall be completed within 5 days of completing the Work. Irrigation repairs shall be completed within 3 days of completing the Work. Contractor shall use the District's landscape contractor (Vargas) for all landscape repairs.
25. Erosion Control. Contractor shall provide an erosion/sediment control plan for use during construction. The plan shall include site specific details showing the type, location, and quantity of BMP's to be used. The erosion/sediment control plan shall be designed to prevent sediment from leaving the construction area. Special attention shall be given to prevent sediment from entering into any wetland area.
26. Vandalism. Contractor shall take all necessary steps to protect the work site from vandalism. Contractor shall be solely responsible to repair any damage caused by vandalism, including the removal of graffiti, at Contractor's own cost. The Contract Price shall not be increased to reimburse Contractor for such costs.



27. Site Conditions. Streets with active Work or stockpiles shall be swept daily at the end of shift. The site shall be cleaned of litter, rubbish and debris. All backfilled and stabilized trenches shall be checked daily and repaired as required by the Engineer. Manholes and valve boxes above grade shall be identified with MUTCD approved warning devices. BMPs shall be checked and cleaned, repaired or replaced as necessary.

## **TECHNICAL SPECIFICATIONS**

As modified herein, the technical specifications on the Urban Drainage and Flood Control District web page (<http://udfcd.org/specifications>) shall apply, except the following;;

:

<b>Item</b>	<b>Section</b>
General Conditions	00 72 00
General Requirements	Division 01

### **SECTION 00 73 00, SUPPLEMENTARY CONDITIONS**

1. Submittals: Contractor shall forward the following submittals to the Engineer for review and acceptance prior to any Work:

- A. Grout
- B. Erosion and Sediment Control Items
- C. Riprap
- D. Seed Mix and Revegetation
- E. Concrete
- F. Miscellaneous Metals
- G. Geotextile Fabrics

2. As-Built Drawings: Contractor shall provide the District with a red-lined set of as-built drawings for the Project, showing those items that were modified during the Work.

3. Field Layout. The layout for the information shown on the drawings will be made available to Contractor in an AutoCAD drawing file for layout/staking purposes. Local project control is available only for Site #4, the Sagamore Drainage Improvements. Work at other sites shall be completed to the lines and grades shown on the drawings and dependent on the existing structures on the sites. Contractor shall confirm that any electronic files are consistent with sealed and signed Contract Documents. For any inconsistencies or discrepancies between electronic files and the sealed and signed Contract Documents, the sealed and signed Contract Documents will govern.

4. Measurement and Payment: The Bid Schedule establishes bid items for the Work, which may be lump sum or unit prices. A description of the Work to be included under each Bid Item is provided. Where aspects of the Work are not specifically included in a Bid Item, said Work will be considered as a subsidiary obligation of the Contract. It is the intent to include all Work that is necessary to result in a complete operable system as shown on the Drawings and specified in the Contract Documents.

### **SECTION 01 29 00, PAYMENT PROCEDURES**

1. Site # 2. Add Bid Item 8, UC-01-001, Remove Rock, Replace, and Grout. No unit of measurement for payment will be made for this Work; payment is included in the Contract Price. Included in this item is demolition of the failed grouted rock area, segregation of rock with grout



and rock without grout, subgrade preparation, dewatering, installation of the first layer of rock, grout, cutoff trench, installation of the second layer of rock and grout, backfill and site cleanup.

2. Site # 4. Add Bid Item 8, UC-01-001, 1/8" to 1/4" Crack Repair. The measurement for payment for this item will be the actual number of linear feet of cracks repaired. Included in this work is surface preparation according to the grout manufacturer's directions, water control, and complete sealing of cracks as described in the specifications. Quantities so measured will be paid for by the linear foot.

3. Site # 4. Add Bid Item 8, UC-01-001, Remove Rock, Replace, and Grout. The measurement for payment for this item will be the actual number of square yards of new grouted rock installed. Included in this item is the removal of existing grouted rock to be replaced, haul of rock that is damaged or otherwise not re-usable, placing, vibrating, finishing and curing grout, providing fibermesh and color in the grout to match existing conditions, furnishing and installing weep drains as directed by the Engineer, washing excess grout from all boulders prior to the grout curing, and providing all related and necessary labor, equipment, and materials to complete the work. Quantities so measured will be paid for at the square yard price.

4. Site # 6. Add Bid Item 14, UC-01-001, 12' Diameter Concrete Forebay (North). The measurement for payment for this item will be the actual number of cubic yards of concrete material placed. Included in this item are excavation, subgrade preparation, dewatering, base material, concrete, protection of any existing utilities during construction, backfill and site cleanup. Quantities so measured will be paid for at the cubic yard price.

5. Site # 6. Add Bid Item 15, UC-01-001, 8' Diameter Concrete Forebay (South). The measurement for payment for this item will be the actual number of cubic yards of concrete material placed. Included in this item are excavation, subgrade preparation, dewatering, base material, concrete, protection of any existing utilities during construction, backfill and site cleanup. Quantities so measured will be paid for at the cubic yard price.

6. Site # 6. Add Bid Item 16, UC01-001, 10' x 8' Micropool. No unit of measurement for payment will be made for this work; payment is included in the Contract Price. Included in this item are excavation, subgrade preparation, dewatering, base material, concrete, trash rack, orifice plate, protection of any existing utilities during construction, backfill and site cleanup.

#### SECTION 31 37 00, RIPRAP, BOULDERS, SOIL RIPRAP, VOID-FILLED RIPRAP AND BEDDING

1. In Section 3.01, PREPARATION, add:

a. Site #2, Purple Park Channel Improvements, Preparation:

i. Strip existing grass cover, which may be used to restore the site.

ii. Excavate existing soil cover and stockpile. Separate rock into two piles. The first pile should be existing surface rock that has attached grout. The second pile is subsurface rock that has little or no attached grout. The existing subsurface rock which does not have grout attached shall be used for proposed surface rock. The rock with grout attached shall be used below the proposed final surface.

2. In Section 3.02, PLACEMENT, add:

a. Site #2, Purple Park Channel Improvements, Placement.

- i. De-water site and cut trench for concrete cutoff wall.
- ii. Pour grout into cutoff wall excavation, use 2 x 4 to form key for second pour. Remove 2 x 4 after sufficient curing.
- iii. Place subsurface and surface rock to final grades. Allow sufficient void space for final grout layer to connect to first pour of cutoff.
- iv. Grout surface rock as per specifications. Intent of work is to provide a water tight bond between rock and grout cutoff wall.

## SECTION 03 06 01, CONCRETE REPAIR CRACK INJECTION

### PART 1 – GENERAL

#### 1.1 REFERENCES: The following standards are referenced in this Section:

- a. D638, Standard Test Method for Tensile Properties of Plastics.
- b. D624, Standard Test Method for Tear Strength of Conventional Vulcanized Rubber and Thermoplastic Elastomers.
- c. D1622, Standard Test Method for Apparent Density of Rigid Cellular Plastics.
- d. D1623, Standard Test Method for Tensile and Tensile Adhesion Properties of Rigid Cellular Plastics.
- e. D2842, Standard Test method for Water Absorption of Rigid Cellular Plastics.

1.2 WORK INCLUDED: Investigate, seal and repair cracks in and through concrete with Hydrophobic Polyurethane Chemical Grout (HPCG), including all materials, labor, tools, equipment, storage provisions, safety provisions and weather- protection provisions necessary to perform, monitor and test repairs.

#### 1.3 DEFINITIONS

Cracks: Cracks are not defined by width and include without limitation: intended and unintended cracks; cracks caused by relief of thermal or settlement movements; cracks resulting from mechanical processes; cracks caused by the effects of the weather; cracks resulting from damage or misuse; voids; and fractures.

Principal Cracks: Cracks identified by the Engineer as most problematic and should be addressed as a priority.

Secondary Cracks: Cracks that may or may not be addressed as determined by the Engineer.

#### 1.4 SUBMITTALS

- a. Supplier's Information: physical and chemical properties for chemical grout and grout accelerator; technical data for metering, mixing and injection equipment; injection ports; and Materials Safety Data Sheets (MSDS).
- b. Quality Control Submittals:
  1. Supplier's recommended surface preparation procedures and product application instructions.



2. Instruction for removing injection-process devices, and other grout installation provisions, and for associated reinstatement and repairs of effected concrete.

3. Supplier's Certificate of Compliance: certified test results for each batch of HPCG and accelerator.

4. Statements of Qualification for the HPCG installation process: Supplier's site representative: crack-prep and injection personnel; injection pump operating technician; certification from the supplier of the specified product attesting to the "Experienced Contractor" status of the installation contractor.

c. Contract Close-out Submittals: records of injected crack locations, with injection pressure, HPCG volume injected and accelerator/grout ratio for each location.

#### 1.5 QUALITY ASSURANCE:

a. Supplier's qualifications: The supplier shall offer a program for training, certifying, technically supporting and periodically re- certifying "Experienced Contractors". The program shall have been ongoing for a minimum of 10 years.

b. Contractor qualifications: The installation contractor shall be an "Experienced Contractor" of the supplier of the specified product, have completed the supplier's program of instruction in the use of the specified repair material and have a minimum of 5 years of experience in installing the product under conditions similar to those on this Project.

c. Qualification for Installation Personnel:

1. Supplier's Site Representative: capable of instructing successful methods for injection cracks in concrete structure utilizing a hydrophobic polyurethane chemical grout injection process; understands, and is capable of explaining, technical aspects of correct material selection, mixing, use and application; experienced in the operation, maintenance and troubleshooting for application equipment.

2. Installation Crew and Crew Foreman: verifiable evidence showing certification by the grout supplier; and Crew Foreman with minimum 5 years experience in successful HPCG injection of at least 10,000 lineal feet.

d. Guarantee: standard quality assurance guarantee.

#### 1.6 DELIVERY, STORAGE AND HANDLING:

a. Contractor shall deliver the specified products in original, unopened containers, with the supplier's name, product label, product identification, MSDS's and batch numbers.

b. Contractor shall store and protect the specified products as recommended by the supplier.

#### 1.7 JOB CONDITIONS:

a. Protection: Precautions shall be taken to avoid damage to all surfaces at or near the Work zone resulting from mixing, handling or placement procedures of the specified materials.

b. Environmental Conditions: Contractor shall comply with the supplier's recommendations for weather and/or confined space working conditions. Crack repair work is not permitted when ice is present in void or crack.

## PART 2 – PRODUCTS

### 2.1 SUPPLIERS:

a. Grout: Hydrophobic polyurethane chemical grout ("HPCG") and accelerator shall be "Mountain Grout" Flexible, SLV, HL-100, Gelfoam, MG295, Ultra, ULTRA SLV along with corresponding Mountain Grout Accelerator, as supplied by Green Mountain International, Inc., 235 Pigeon Street, Waynesville, NC 28786 (800-942-5151). HPCG shall be shipped as non-hazardous and contain no solvents or VOCs. HPCG pump cleaner/flush shall be solvent free and non-flammable.

b. Injection Ports: Injection Ports shall be free of corrosive materials and shall be recommended and supplied by Green Mountain International, Inc., 235 Pigeon Street, Waynesville, NC 28786 (800-942-5151).

## PART 3 – EXECUTION

3.1 GENERAL: Repair cracks by injection of hydrophobic polyurethane chemical grout. Repair cracks specified and as shown.

3.2 PREPARATION: Slabs and walls shall be treated shall have their surfaces cleared of all debris and attachments to allow free and clear access to the work, and also to allow access for monitoring grout travel. Before commencing Work, Contractor shall review Contract drawings, existing drawings and physical surroundings to ascertain impediments to setting injection ports and injection grout.

### 3.3 APPLICATION:

a. Cracks and joints shall be filled to the maximum with the HPCG. Remove spalled and weakened concrete, loose mortar, dirt, laitance, oil, grease, salt, and other contaminants from the path of the crack.

b. Preparation: Holes shall be drilled adjacent to each crack at an approximate angle of 45 degrees to the plane of the concrete member. The holes shall be offset to each side of the line of the crack such that opposing holes intersect the joint/crack at its approximate mid-depth. Provide holes from both sides of a wall where access can be readily made available. All drill dust shall be flushed from the holes, using copious amounts of water injection into the hole until it runs clear. The holes shall be flushed in successive order, beginning with the bottom-most hole.

c. Injection Port Devices: Two styles of injection ports are acceptable, each available from Green Mountain International, Inc.

i. 5/8" diameter holes shall be drilled for Mechanical Type Injection Ports, which are inserted into the drilled holes and secured into place by an expandable rubber section as the packer is tightened.

ii. 3/8" diameter holes shall be drilled for "tap-in" type injection ports, which are hammered into the drilled hole.



d. Hole Spacing: Successive holes servicing a crack shall be placed at appropriate intervals, typically 12" apart, to ensure full infiltration of HPCG throughout the length and depth of the joint/crack. In narrow (hairline) cracks, holes will be closer together, and in wide cracks they may be farther apart. Contractor shall visually monitor grout flow to determine and verify adequate hole spacing.

e. Mixing Procedure: Mountain Grout shall be mixed by very gradually pouring component "B", accelerator, into component "A" while carefully stirring, so as not to entrain air into the mixture. Water shall not enter the mixture.

f. Placement:

i. HPCG shall be pumped through a piston pump, within an operating range of between 500 and 1000 psi, but nevertheless, capable of producing discharge pressures of 3000 psi.

ii. Cracks may be actively leaking water during crack preparation and, ideally, during grout injection. Small quantities of water maybe injection into the crack to simulate a leaking condition and promote activation of the grout. This technique must begin at the deepest parts of the crack.

iii. Pumping shall alternate from injection port to injection port, with multiple passes on each hole, until either stall pressure is achieved or grout flow is observed issuing from the crack/joint as a result of continued injection onto a hole local to the area. Contractor shall begin pumping procedures at the base of vertical crack-lines and monitor the injection process and adjust injection technique and material mix-proportions as appropriate.

iv. If penetration of any crack proves impossible, Contractor shall discontinue the injection procedure and consult the Engineer. If, to fill the cracks, modification of the procedure is required, Contractor shall submit a written proposal to the Engineer for approval prior to proceeding.

v. Contractor shall adhere to all limitations and cautions for the grout stated in the supplier's current printed literature.

g. Cleaning: All excess HPCG shall be cleaned from the area and legally discarded. Contractor shall leave finished Work and the Work area, in a neat, clean condition.

### 3.4 FIELD QUALITY CONTROL:

Successful grouting shall be judged from visual inspection by the Engineer or core drilling representative samples for evaluation.

## **CONSTRUCTION DRAWINGS**

<b>Sheet Number</b>	<b>Title</b>
<b>1</b>	Cover Sheet
<b>2</b>	Site # 1 – Indiana Street Culverts Improvements
<b>3</b>	Site #2 – Purple Park Channel Improvements
<b>4</b>	Site #3 - Coalton Storage Pond Maintenance
<b>5</b>	Site #4 – Calmante Drop Structure Repair
<b>6.1 – 6.4</b>	Site #5 – Sagamore Drainage Improvements
<b>7.1 – 7.5</b>	Site #6 – Superior Marketplace Detention Improvements



**PAYMENT AND PERFORMANCE BOND**

Bond No. 30032216

KNOW ALL MEN BY THESE PRESENTS: that

(Firm) Frontier Environmental Services, LLC

(Address) 5350 Vivian Street, Unit B, Arvada, CO 80002

(an Individual), (a Partnership), (a Corporation), hereinafter referred to as "the Principal", and

(Firm) Western Surety Company

(Address) 333 S. Wabash, 41st Floor, Chicago, IL 60604

hereinafter referred to as "the Surety", are held and firmly bound unto the Town of Superior, Colorado, a Municipal Corporation, hereinafter referred to as "the Owner", in the penal sum of \*See Below Dollars in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas the Principal entered into a certain Contract with the Owner, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is hereto attached and made a part hereof for the performance of the Work, 2018 Drainage Projects.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without Notice to the Surety and during the life of the guaranty or warranty period, and shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the Owner from all cost and damages which it may suffer by the Principal's failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, and make payment to all persons, firms, subcontractors and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such Contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, repairs on machinery, equipment and tools, consumed, rented or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor performed in such work, whether by subcontractor or otherwise, then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications.

\*One Hundred Fifty-three Thousand Nine Hundred Twenty-nine and No/100 (\$153,929.00)

K-1

PROVIDED, FURTHER, that no final settlement between the Owner and the Principal shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in 5 counterparts, each one of which shall be deemed an original, this 22nd day of February, 2018.

ATTEST:

By: Mona Nolan  
Title: manager

PRINCIPAL Frontier Environmental Services, LLC

By: [Signature]  
Title: Partner

Address: 5350 Vivian Street, Unit B  
Arvada, CO 80002

(Corporate Seal)

SURETY

ATTEST:

By: [Signature]  
Attorney-in-Fact: Maura P. Kelly

Surety: Western Surety Company

By: Maura P. Kelly  
Title: Attorney-in-Fact

Address: 14010 FNB Parkway, Suite 300  
Omaha, NE 68154

(Surety Seal)

NOTE: Date of Bond must not be prior to date of Contract and Surety must be authorized to transact business in the State of Colorado and be acceptable to the Town.



# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

**Know All Men By These Presents**, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Sharon K Murray, Jacqueline L Drey, Kevin J Stenger, David A Dominiani, Maura P Kelly, Joan Leu, Individually**

of Omaha, NE, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

### - In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

**In Witness Whereof**, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 28th day of September, 2017.



WESTERN SURETY COMPANY

Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 28th day of September, 2017, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

June 23, 2021



J. Mohr, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 22nd day of February, 2018.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

**PAYMENT AND PERFORMANCE BOND**

Bond No. 30032216

KNOW ALL MEN BY THESE PRESENTS: that

(Firm) Frontier Environmental Services, LLC

(Address) 5350 Vivian Street, Unit B, Arvada, CO 80002

(an Individual), (a Partnership), (a Corporation), hereinafter referred to as "the Principal", and

(Firm) Western Surety Company

(Address) 333 S. Wabash, 41st Floor, Chicago, IL 60604

hereinafter referred to as "the Surety", are held and firmly bound unto the Town of Superior, Colorado, a Municipal Corporation, hereinafter referred to as "the Owner", in the penal sum of \*See Below Dollars in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas the Principal entered into a certain Contract with the Owner, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is hereto attached and made a part hereof for the performance of the Work, 2018 Drainage Projects

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without Notice to the Surety and during the life of the guaranty or warranty period, and shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the Owner from all cost and damages which it may suffer by the Principal's failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, and make payment to all persons, firms, subcontractors and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such Contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, repairs on machinery, equipment and tools, consumed, rented or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor performed in such work, whether by subcontractor or otherwise, then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications.

\*One Hundred Fifty-three Thousand Nine Hundred Twenty-nine and No/100 (\$153,929.00)

K-1



PROVIDED, FURTHER, that no final settlement between the Owner and the Principal shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in 5 counterparts, each one of which shall be deemed an original, this 22nd day of February, 2018.

ATTEST:

By: Monas Nolan

Title: Manager

PRINCIPAL Frontier Environmental Services, LLC

By: [Signature]

Title: Partner

Address: 5350 Vivian Street, Unit B

Arvada, CO 80002

(Corporate Seal)

SURETY

ATTEST:

By: [Signature]

Attorney-in-Fact: Maura P. Kelly

Surety: Western Surety Company

By: Maura P Kelly

Title: Attorney-in-Fact

Address: 14010 FNB Parkway, Suite 300

Omaha, NE 68154

(Surety Seal)

NOTE: Date of Bond must not be prior to date of Contract and Surety must be authorized to transact business in the State of Colorado and be acceptable to the Town.

SUPERIOR METROPOLITAN DISTRICT NO. 1  
RESOLUTION NO. SMD#1 - 3  
SERIES 2018

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SUPERIOR METROPOLITAN DISTRICT NO. 1 APPROVING THE THIRD AMENDMENT TO THE FIFTH INTERIM AGREEMENT WITH THE MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY DISTRICT WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE FOR CONTINUED PARTICIPATION IN THE WINDY GAP FIRING PROJECT

WHEREAS, the District has entered into agreements with the Municipal Subdistrict, Northern Colorado Water Conservancy District, acting by and through its Windy Gap Firing Project Water Activity Enterprise (the "WGF Enterprise") for participation in the Windy Gap Firing Project (the "Project");

WHEREAS, continued work on the Project has led to an increase in the District's planned storage capacity by 226 acre feet, for a new District total storage capacity of 4,726 acre feet of water;

WHEREAS, completion of the fifth phase of the Project will require additional funding in 2018 to obtain the local, state and federal permits and approvals required for the Project; for detailed engineering design; for additional land acquisition and planning; and for related activities; and

WHEREAS, the WGF Enterprise is requesting additional funds from the District in the amount of \$472,600 for the 2018 calendar year.


NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SUPERIOR METROPOLITAN DISTRICT NO. 1; AS FOLLOWS:

Section 1. The Board hereby approves the Third Amendment to the Fifth Interim Agreement for continued participation in the Windy Gap Firing Project in substantially the form attached hereto subject to final approval by the District's general counsel.

Section 2. The Board hereby authorizes the expenditure of funds in the amount of \$472,600 for the District's share of the 2018 calendar year costs, which will be due on March 1, 2018.



ADOPTED this 26<sup>th</sup> day of February, 2018.

  
\_\_\_\_\_  
Clint Folsom, President

ATTEST  
  
\_\_\_\_\_  
Phyllis L. Gordin, Secretary

THIRD AMENDMENT TO FIFTH INTERIM AGREEMENT BETWEEN THE  
MUNICIPAL SUBDISTRICT,  
NORTHERN COLORADO WATER CONSERVANCY DISTRICT  
WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE,  
AND  
**SUPERIOR METROPOLITAN DISTRICT NO. 1**  
FOR PARTICIPATION IN THE  
WINDY GAP FIRING PROJECT

This Third Amendment is made and entered into as of March 7, 2018, by and between the Municipal Subdistrict, Northern Colorado Water Conservancy District (a quasi-municipal entity and political subdivision of the State of Colorado) (the "Subdistrict"), acting by and through its Windy Gap Firing Project Water Activity Enterprise (a government-owned business within the meaning of Article X, Section 20(2)(d), of the Colorado Constitution, organized pursuant to C.R.S. §§ 37-45.1-101 et seq.), whose address is 220 Water Avenue, Berthoud, Colorado 80513 (the "WGF Enterprise"), and the Superior Metropolitan District No. 1, whose address is 124 East Coal Creek Drive, Superior, Colorado 80027 ("Participant"), for the purpose of amending the Fifth Interim Agreement between the parties (the "Agreement").

**RECITALS**

WHEREAS, The WGF Enterprise is continuing work on the Fifth Phase of the Project which consists of completion of all local, state and federal permits and approvals required for the Project; detailed engineering design including preparation of plans and specifications for contractor procurement; additional land acquisition; planning and implementation of required mitigation and enhancement measures; and related activities. Completion of the Fifth Phase of the Project on behalf of the Participants will require additional funding in 2018; and

WHEREAS, In September of 2016, the City of Loveland executed an Amendment to the Fifth Interim Agreement which adjusted their storage capacity in the Project and which is considered the First Amendment to the Fifth Interim Agreement.

WHEREAS, In March of 2017, all Participants executed an Amendment to the Fifth Interim Agreement which adjusted their storage capacity in the Project and adjusted each Participant's costs to date based on the revised storage allocation, and which is considered the Second Amendment to the Fifth Interim Agreement.

NOW THEREFORE, in consideration of the foregoing recitals, the Parties agree as follows:

1. The Agreement is amended by deletion of paragraph 3 and the substitution of the following new paragraph 3.



3. Participant agrees to provide to the WGF Enterprise funds for its pro rata share of the costs necessary to complete the Fifth Phase of the Project.

A. The WGF Enterprise estimated that Participant's pro rata share of the costs of the Fifth Phase of the Project was \$719,329 for the 2016 calendar year. Participant paid the WGF Enterprise its pro rata share of the 2016 calendar year costs.

B. The WGF Enterprise estimated that Participant's pro rata share of the costs of the Fifth Phase of the Project was \$561,079 for the 2017 calendar year. Participant paid the WGF Enterprise its pro rata share of the 2017 calendar year costs.

C. The WGF Enterprise estimates that Participant's pro rata share of the cost of the Fifth Phase of the Project is \$472,600 for the 2018 calendar year. Participant will pay the WGF Enterprise its pro rata share of the 2018 calendar year costs on or before March 1, 2018. This estimated cost will not be increased or exceeded without the prior written approval of Participant.

If the Fifth Phase of the Project cannot be completed within these estimated costs, the WGF Enterprise is not obligated to complete the Fifth Phase of the Project for the benefit of Participant unless sufficient additional pro rata funds as determined by the WGF Enterprise are provided by Participant. Attached hereto as Exhibits A, B and C are tables showing the pro rata share of the costs of the Project for each Participant for 2016, 2017 and 2018 based upon then-current allocations of capacity in the Project.

2. All other terms and conditions of the Agreement shall continue in full force and effect except as specifically amended herein.

SUPERIOR METROPOLITAN  
DISTRICT NO. 1

By: Clint Folsom  
Name: Clint Folsom  
Title: President

MUNICIPAL SUBDISTRICT, NORTHERN  
COLORADO WATER CONSERVANCY  
DISTRICT, ACTING BY AND THROUGH THE  
WINDY GAP FIRING PROJECT WATER  
ACTIVITY ENTERPRISE

By: Brendy D. Wind  
Name: Brendy D. Wind  
Title: Assistant G. M.

## EXHIBIT A - Amended

### Windy Gap Firing Project Amended Allocation of Costs for Fifth Interim Agreement (Phase 5)

Estimated Phase 5 Costs in 2016: \$ 13,775,950

Participant	Requested Storage Volume (af)	Share of Phase 5 Cost
Broomfield	25,200	\$ 4,028,243
CWCWD	330	\$ 52,751
Erie	6,000	\$ 959,105
Fort Lupton	1,050	\$ 167,843
Greeley <sup>2</sup>	8,750	\$ 1,398,695
Lafayette	1,800	\$ 287,732
Little Thompson WD	4,850	\$ 775,277
Longmont	10,000	\$ 1,598,509
Louisville	2,700	\$ 431,597
Loveland <sup>1</sup>	9,000	\$ 1,438,658
PRPA	12,000	\$ 1,918,211
Superior	4,500	\$ 719,329
TOTAL	86,180	\$ 13,775,950

2016 Phase 5 Costs Per Acre-Foot of Storage: \$ 159.85

Notes: 1. This Exhibit A reflects Loveland's revised storage capacity based on a September 2016 Amendment to 5th Interim Agt.

2. Greeley's "Share of Phase 5 Cost" includes \$279,739 that Greeley will pay as the result of the reallocation of WGFP capacity from Evans to Greeley.



## EXHIBIT B

Windy Gap Firming Project  
Allocation of Costs for Second Amendment to Fifth Interim Agreement (Phase 5)

Estimated Phase 5 Costs in 2017: | \$ 10,464,291 |

Participant	Requested Storage Volume (af)	Total Participant Contributions Through 2015	Phase 4 Participant Contributions Through 2015	Phase 5 2016 Participant Contributions	Phase 4+5 Participant Contributions to Date	2017 Un-adjusted Participant Contributions	Phase 4+5 Participant Obligation to Date	Phase 4+5 Participant Payment Adjustment	2017 Adjusted Participant Contributions
				\$ 13,775,950		\$ 10,464,291			
Broomfield	26,464	\$ 4,814,330	\$ 3,852,466	\$ 4,028,243	\$ 7,880,709	\$ 3,076,966.63	\$ 8,077,903	\$ 197,194	\$ 3,274,160
CWCWD	346	67,624	\$ 50,448	\$ 52,751	\$ 103,198	\$ 40,229.39	\$ 105,613	\$ 2,415	\$ 42,645
Erie	6,000	1,127,959	\$ 948,081	\$ 959,105	\$ 1,907,187	\$ 697,619.40	\$ 1,831,447	\$ (75,740)	\$ 621,880
Fort Lupton	1,103	110,720	\$ 110,720	\$ 167,843	\$ 278,563	\$ 128,245.70	\$ 336,681	\$ 58,118	\$ 186,364
Greeley <sup>1</sup>	9,189	2,180,569	\$ 1,586,660	\$ 1,398,695	\$ 2,985,355	\$ 1,068,404.11	\$ 2,804,861	\$ (180,494)	\$ 887,910
Lafayette	900	377,587	\$ 275,176	\$ 287,732	\$ 562,908	\$ 104,642.91	\$ 274,717	\$ (288,191)	\$ (183,548)
Little Thompson WD	4,850	511,419	\$ 511,419	\$ 775,277	\$ 1,286,696	\$ 563,909.02	\$ 1,480,420	\$ 193,724	\$ 757,633
Longmont	10,000	2,963,224	\$ 2,047,162	\$ 1,598,509	\$ 3,645,671	\$ 1,162,699.00	\$ 3,052,412	\$ (593,259)	\$ 569,440
Louisville	2,835	567,348	\$ 412,762	\$ 431,597	\$ 844,360	\$ 329,625.17	\$ 865,359	\$ 20,999	\$ 350,624
Loveland	9,451	1,971,377	\$ 1,284,331	\$ 1,438,658	\$ 2,722,989	\$ 1,098,866.82	\$ 2,884,834	\$ 161,846	\$ 1,260,713
PRPA	14,136	2,881,626	\$ 1,904,878	\$ 1,918,211	\$ 3,823,089	\$ 1,643,591.31	\$ 4,314,889	\$ 491,801	\$ 2,135,392
Superior	4,726	1,227,454	\$ 711,654	\$ 719,329	\$ 1,430,983	\$ 549,491.55	\$ 1,442,570	\$ 11,587	\$ 561,079
<b>TOTAL</b>	<b>90,000</b>	<b>18,801,237</b>	<b>\$ 13,695,757</b>	<b>\$ 13,775,950</b>	<b>\$ 27,471,707</b>	<b>\$ 10,464,291</b>	<b>\$ 27,471,707</b>	<b>\$ 0</b>	<b>\$ 10,464,291</b>

Phase 4 Cost per Acre Foot: \$ 305.24

Notes: 1. The calculation of "Phase 5 2016 Participants Contributions" allocated to Greeley includes \$279,739 that Greeley will pay in addition to Greeley's \$887,910 "2017 Adjusted Participant Contributions" as the result of the reallocation of WGFP capacity from Evans to Greeley.

## EXHIBIT C, revised

### Windy Gap Firming Project Amended Allocation of Costs for Fifth Interim Agreement (Phase 5)

Estimated Phase 5 Costs in 2018: \$ 9,000,000

Participant	Requested Storage Volume (af)	Share of Phase 5 Cost
Broomfield	26,464	\$ 2,646,400
CWCWD	346	\$ 34,600
Erie	6,000	\$ 600,000
Fort Lupton	1,103	\$ 110,300
Greeley	9,189	\$ 918,900
Lafayette	900	\$ 90,000
Little Thompson WD	4,850	\$ 485,000
Longmont	8,000	\$ 800,000
Louisville	2,835	\$ 283,500
Loveland	9,587	\$ 958,700
PRPA	16,000	\$ 1,600,000
Superior	4,726	\$ 472,600
TOTAL	90,000	\$ 9,000,000

2018 Phase 5 Costs Per Acre-Foot of Storage: \$ 104.43

**Note:** Participation levels for Longmont, Loveland, and PRPA assume pending transfers of 2,000 acre-feet of storage from Longmont to PRPA and Loveland are approved by their respective Councils and Board. If approval is not obtained, the storage amounts will be 10,000 af for Longmont, 9,451 af for Loveland, and 14,136 af for PRPA. All other storage amounts and cost shares will remain unchanged.